IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3458 OF 2006

Shri Parshram Ananda Adhav .. Petitioner

Vs.

1. Shri Pandit Govind Kularani
and anr. .. Respondents

Mr. G.R. Agrawal for petitioner.

CORAM: B.H. MARLAPALLE, J.

Date : July 03, 2006.

P.C.:

1. Heard Mr. Agrawal the learned counsel for the petitioner - judgment debtor. Regular Civil Suit No. 141 of 1996 came to be decreed against the present petitioner and the said decree has been confirmed by this court in the Second Appeal. The plaintiff filed Regular Darkhast No.68 of 1999 for execution of the decree and during the pendency of this Darkhast the present petitioner-judgment debtor filed Regular Civil Suit No. 248 of 2000 in respect of very same premises and prayed for permanent injunction against the plaintiff in RCS No.141 of 1996 and who is also the decree holder in Regular Darkhast No.68 of 1999. This

suit was partly allowed by the learned Civil Judge, Junior Division at Nasik-Road on 1/1/2004 and both the parties challenged the said order before the Lower Appellate Court. The petitioner filed Regular Civil Appeal No.90 of 2005 which has already been dismissed by the learned 6th Ad-hoc Additional District Judge, whereas the present respondent filed Appeal No.29 of 2004 which is pending.

2. Under these circumstances, the petitioner moved an application at Exh.33 in Regular Darkhast No.68 of 1999 and prayed for stay to the execution of possession warrant till the appeal filed by the present respondent is decided. By the impugned order dated 28/3/2006 the learned Civil Judge, Junior Division at Nashik was pleased to reject the application at Exh.33.

3. Obviously, this application at Exh.33 was moved under Order XXI Rule 29 of C.P.C. The learned Judge of the executing court noted that there was no legal bar operating against the execution proceedings and all that the decree passed in favour of the

petitioner stated that his possession will not be disturbed except by the due process of law. The decree passed on 1/1/2004 in favour of the present petitioner in RCS No.248 of 2000 reads as under:-

> "The defendants, their agents, servants or any person through defendants are permanently restrained from obstructing the possession of the plaintiff over House No.153 situated in Survey No.54/1/1 at Mouje Dasak, Tal.Dist. Nashik, without due process of law.
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> The Defendants are further permanently restrained from evicting the plaintiff from House No.153, situated in Survey No.54/1/1 at Mouje Dasak, Tal. and Dist. Nashik, without due process of law."

. On the face of this decree which was challenged by the petitioner himself and he failed before the Lower Appellate Court, there was no reason for the executing court to stay possession warrant

which was issued in the due process of law i.e. for the execution of the decree in RCS No.141 of 1996 which was confirmed by this court in the Second Appeal ad had thus reached its finality. Hence, view taken by the trial court cannot be termed as perverse or patently erroneous so as to cause interference in the same under Article 227 of the Constitution.

4. The petition is rejected summarily.

(B.H. Marlapalle,J.)